



# City of Marietta

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

## Meeting Minutes

### BOARD OF ZONING APPEALS

***Bobby Van Buren, Chairman***  
***Karen Kirkpatrick, Vice Chairwoman, Ward 1***  
***J. K. Lowman, Ward 2***  
***Larry Zenoni, Ward 3***  
***David Hunter, Ward 4***  
***Ronald Clark, Ward 5***  
***Tom Samples, Ward 7***

**Monday, September 30, 2019**

**6:00 PM**

**City Hall Council Chambers**

*Present: Bobby Van Buren, Karen Kirkpatrick, J. K. Lowman, Larry Zenoni, David Hunter, Ronald Clark and Tom Samples*

*Staff:*

*Rusty Roth, Director, Development Services*  
*Shelby Little, Planning & Zoning Manager*  
*Jasmine Thornton, Planning & Zoning Administrator*  
*Robin Osindele, Urban Planner*  
*Douglas Haynie, City Attorney*  
*Ines Embler, Secretary to the Board*

### **CALL TO ORDER:**

*Chairman Van Buren called the September 30, 2019 meeting of the Board of Zoning Appeals to order at 6:00 PM.*

*Chairman Van Buren explained the rules and procedures used in conducting the public hearings.*

### **MINUTES:**

**20190841      August 26, 2019 Board of Zoning Appeals Meeting Minutes**

#### **Review and Approval of the August 26, 2019 Board of Zoning Appeals Meeting Minutes.**

*Mr. Samples made a motion, seconded by Ms. Kirkpatrick that the August 26, 2019 Board of Zoning Appeals meeting minutes be approved. The Motion carried 7-0-0.*

**A motion was made by Board member Samples, seconded by Board member Kirkpatrick, that this matter be Approved and Finalized. The motion carried by the following vote:**

**Absent:    0**

**Vote For:  7**

**VARIANCES:****20190670 V2019-25 [SPECIAL LAND USE PERMIT] ALDERSWOOD (GEORGIA), LLC**

**V2019-25 [SPECIAL LAND USE PERMIT] ALDERSWOOD (GEORGIA), LLC is requesting a Special Land Use Permit for a cemetery expansion on property zoned R-2 (Single Family Residential - 2 units/acre), located in Land Lots 325 & 326, District 20, Parcels 2180 & 0080, 2nd Section, Marietta, Cobb County, Georgia, and being known as 1306 & 1326 Whitlock Avenue. Ward 2A.**

*A public meeting was held.*

*Mr. Garvis Sams, Esq., for the Applicant, presented a request for a Special Land Use Permit for a cemetery expansion.*

*There was one (1) in support and one (1) in opposition to this request. Mr. Stuart Napshin spoke in support and Mrs. Barbara Martin spoke in opposition.*

*Mr. Sams stated there was a typographical error in the stipulation letter dated September 13, 2019 where the number of interment spaces is listed as 1100. He said the correct total number of interment spaces is 1184, not 1100. He requested the correction be made as part of the variance request.*

*There were no questions from the Board Members.*

*Mr. Napshin spoke on behalf of Carriage Oaks Homeowner's Association. He stated that given the limited scope of what the cemetery wants to do and confine themselves to zone 1 and zone 2, the Board of Directors is in favor of that position for the HOA. He said his only caveat is that for any future changes the cemetery and the attorneys would come to the homeowners and they can create an agreement together that everybody could work with as it did not happen previously.*

*Mr. Lowman asked Mr. Haynie, if given the request to have an open-ended agreement to work together, if it was possible to make that a stipulation. Chairman Van Buren said he didn't think they could stipulate that and Mr. Haynie affirmed. Mr. Sams stated that he was not involved in the previous application, but since that time they have agreed to continue the dialogue with Carriage Oaks. He said it will be at least five (5) years before they'll be seeing any other request for additional interments and stated that they have his representation as a matter of public record that they will continue the dialogue with them at the time, assuming that he is still practicing law. Mr. Lowman said he hopes that continues and felt this his statement was sufficient if recorded in the minutes.*

*Mrs. Martin spoke in opposition. She expressed concern about the future possibility of adding a crematory and about the environmental impact on nature. Chairman Van Buren stated that they cannot address anything outside the request before the Board tonight and that they request tonight does not include any request for a crematory.*

*The public hearing was closed.*

*A motion was made by Mr. Lowman to approve this application as stipulated on the basis*

that exceptional or extraordinary circumstances or conditions are applicable to the development of the site that do not apply generally to sites in the same zoning district. It was seconded by Mr. Hunter. The Motion carried 7-0-0.

The following variances and stipulations are incorporated as conditions of the Special Land Use Permit:

Letter of stipulations from Sams, Larkin, Huff & Balli, LLP to Mr. Rusty Roth, Development Services Director dated September 13, 2019, with the correction to Item #5; the total number of maximum interment spaces is 1184.

A motion was made by Board member Lowman, seconded by Board member Hunter, that this matter be Approved as Stipulated. The motion carried by the following vote:

Absent: 0

Vote For: 7

20190742

**V2019-26 [VARIANCE] DAVID & BENITA MCKOY**

**V2019-26 [VARIANCE] DAVID & BENITA MCKOY are requesting variances for property zoned R-4 (Single Family Residential - 4 units/acre), located in Land Lot 1144, District 16, Parcel 0030, 2nd Section, Marietta, Cobb County, Georgia, and being known as 314 Pine Street. Variance to reduce the front yard setback from 25' to 22;' variance to reduce the major side setback from 25' to 9;' variance to reduce the rear yard setback from 30' to 18;' Variance to increase the building coverage from 35% to 37%. Ward 5A.**

*A public meeting was held.*

*Mr. David McKoy presented a request for a variance to reduce the front yard setback from 25' to 22;' variance to reduce the major side setback from 25' to 9;' variance to reduce the rear yard setback from 30' to 18;' Variance to increase the building coverage from 35% to 37%.*

*There was no opposition to this request.*

*Mr. Clark asked if the large tree on the side was going to be removed. Mr. McKoy said that tree is almost like a family member and it was not coming down.*

*Chairman Van Buren asked why he's asking to go from 25 feet down to 9 feet on the major side setback. Mr. McKoy said the reason is that if the variance on the side was 25 feet, the house would be about 15 feet wide.*

*The public hearing was closed.*

*A motion was made by Mr. Clark to approve this application on the basis that it would not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare. It was seconded by Mr. Samples. The Motion carried 7-0-0.*

A motion was made by Board member Clark, seconded by Board member Samples, that this matter be Approved and Finalized. The motion carried by the following vote:

Absent: 0

Vote For: 7

20190753

**V2019-27 [VARIANCE] KIMBERLY NORWOOD PROPERTIES, LLC**

**V2019-27 [VARIANCE] KIMBERLY NORWOOD PROPERTIES, LLC is requesting a variance for property zoned R-4 (Single Family Residential - 4 units/acre), located in Land Lot 1216, District 16, Parcel 1160, 2nd Section, Marietta, Cobb County, Georgia, and being known as 440 Lawrence Street. Variance to reduce the side yard setback on the west side from 10' to 7'. Ward 5A.**

*A public meeting was held.*

*Mr. Rick Kolb presented a request for a variance to reduce the side yard setback on the west side from 10' to 7'.*

*There were two (2) in opposition to this request. Ms. Cathi Julian and Mr. Raymond Hammond opposed.*

*Chairman Van Buren asked if the previous runoff concerns have been addressed. Mr. Kolb said they have met with Staff and have addressed all issues. They will be installing a Berm and removing the stair.*

*Chairman Van Buren asked if he was aware of any opposition. Mr. Kolb said he was not.*

*Chairman Van Buren asked what his plans regarding runoff were for the house on the west side. Mr. Kolb said they are doing a retaining wall, but that the house in the west sits higher, so the runoff would be coming from that house because it sits above his property.*

*Ms. Julian expressed concern about possible erosion. She feels the new plans have more impervious surfaces and feels that will not allow water to drain properly. She is also not sure what's actually being built there as she said they have submitted several different plans. She said she is concerned that grading will cause earth movement and may cause damage to her property.*

*Chairman Van Buren stated that he has worked with Staff and is now in compliance with drainage issues. Mr. Kolb explained that she's on the east side and that there is going to be a swale and a berm directing water to Lawrence Street.*

*Mr. Hammond opposed stating he lives right in front of the property and is concerned with water draining into his property. Chairman Van Buren explained that his property is higher than Mr. Kolb's property and therefore any runoff would actually be coming from his property onto Mr. Kolb's.*

*The public hearing was closed.*

*A motion was made by Mr. Clark to approve this application on the basis that it would not be detrimental or injurious to property or improvements in the vicinity of the development*

site, or to the public health, safety, or general welfare. It was seconded by Mr. Lowman. The Motion carried 7-0-0.

**A motion was made by Board member Clark, seconded by Board member Lowman, that this matter be Approved and Finalized. The motion carried by the following vote:**

Absent: 0

Vote For: 7

**20190756**

**V2019-29 [VARIANCE] MUST MINISTRIES INC**

**V2019-29 [VARIANCE] MUST MINISTRIES INC is requesting a variance for property zoned CRC (Community Retail Commercial), located in Land Lot 932, District 16, Parcels 0070 & 0270, 2nd Section, Marietta, Cobb County, Georgia, and being known as 1260 Cobb Parkway North and 1297 Bells Ferry Road. Variance to allow a homeless shelter within 750 feet of residentially zoned property. Ward 4B.**

*A public meeting was held.*

*Mr. Donald Hausfeld presented a request for a variance to allow a homeless shelter within 750 feet of residentially zoned property.*

*There were many in support and many in opposition to this request. Mr. Dudley Field, Mr. Steve Rush, Mr. Craig Lewis, Mr. Todd Downey, Ms. Joy Johnson, Ms. Carol Brown and Ms. Theresa Prewett spoke in opposition. Mr. Roy Barnes spoke in support.*

*There were no questions from the Board Members.*

*Mr. Field opposed to the 750-foot buffer stating he sees no reason why they can't build a three-story building and stay within the required buffers.*

*Mr. Rush expressed concern about the homeless people approaching him at his house. He said in January he was walking out to his mailbox when he was approached by a woman asking to use his phone. He went inside to get it and when he came back out she was gone. He later learned she was being sought by police for a crime. He said a few weeks ago he got a call from his neighbor around the corner who informed him that he followed someone who did not live in the neighborhood and saw him urinate in front of his property. He said there are several occurrences but for lack of time will not talk about all of them. He said the vacant house at 1547 Bells Ferry Road, which is just down the street from the proposed shelter has become a magnet for the homeless. It's about 1,000 feet from his house and less than 300 feet from the nearest occupied house. He feels MUST Ministries is doing some good in the community helping the 74% we heard about and the proposed design looks pretty good, what he sees in the area is not the kind of people who are really taking advantage and getting help. They are more there to take advantage of the free stuff that's being offered and just to live a responsibility free lifestyle. He feels this kind of misguided altruism is not really helping the community. It's doing more harm to the people that live there and the businesses that are trying to operate there. He is asking the board to deny this variance.*

*Mr. Lewis owns the Atlanta Pet Resort, which is about 200 feet from the proposed site. He said they have been in business there for about 25 years. He said there are between 200-300*

people that are turned away daily, as their own numbers state and those are the people that they have to deal with. He said the area might be light industrial, but there are people that run those businesses. He has two dozen employees, most between the ages of 18 and 23. He can't leave his business when they close at 7:00PM unless all of his employees have already gone because he doesn't trust the area enough to leave them. He said the good work of MUST Ministries is not the question, the question is what are they going to do about the 200-300 people that are turned away and the ones that do not leave the area and they have to deal with on a daily basis. He said just this week he had stop two people from eating lunch in the middle of the day on his front grass in front of his business during fall break when he is ridiculously busy taking care of pets. A customer told him there were two customers eating lunch out front; they were not customer nor employees. He had to politely ask them to leave. They have been dealing with this for almost 25 years and nothing has changed; they will not address the problem with the people that they turn away. He asked the board to deny this variance.

Mr. Downey passed to the Board pictures of what it looks like 30 feet from his house. He said he deals with this on a daily basis. His eleven year old child cannot ride his bike on his street; Old Bells Ferry Rd. He said he's only 300+ feet from the proposed site so he doesn't know where they get the 750 foot line because it's less than that. He said you can see in the pictures that they even tried to build a house on the lot. He said they throw parties and he has heard gun shots. He has called the police numerous times and they have locked up several people and it's a problem every single day. He does not have a problem with MUST, the problem is what Mr. Lewis said, the people that are turned away. He said these people do not want help, they are chronic homeless. He has homeless people walking up his property and his carport. He has it all on his surveillance cameras. He said he caught someone trying to take his bicycles and their response was that they thought he didn't want the bikes. He said the abandoned house previously mentioned has at least 50 people living in there. He is praying that this does not get approved.

Ms. Johnson is the Executive Director of the Georgia Ballet. She takes issue with the statement that it's all Light Industrial on Field Parkway. They have a two-story building; a professional ballet company and a school with approximately 160 students from ages 3 to 17. She said her students are there at night until 8:30 or 9:00PM. She said she currently has someone sleeping under her deck that she has spoken to the police about but he apparently still there. He has a bedroll under her deck. She said she is responsible for the safety of these children and she takes that very seriously. She's wondering if she needs to hire a security guard to see them out at night. This has been getting worse and worse in the years that she's been the executive director there. They have been broken into three times. They brake the glass and go into the office looking for cash. They take nothing of value, just looking for cash. It's very expense, annoying and dangerous. She is asking the Board not to approve this.

Ms. Brown said she is a 31-year resident of Cobb County and works with four neighborhoods. She has a presentation, but since they are running out of time, she will be brief. She went over the criteria the Board has in their decision making and said she believes her testimony tonight will indicate that approving this request will be harmful to the public health, safety, or general welfare of the public. She stated that she has submitted numerous 911 incident recalls and that in the last 12 months there were 65 pages totaling 735 incidents at the Elizabeth Inn or at least right outside the gates. That's compared to 5 pages for the Extension in the same period. She said there are problems at McDonalds, the Exxon, the vacant house everyone has referred to. She believes that MUST made the decision not to build back in 2017 even though they were permitted. They waited for two years and resubmitted a variance. She submits that adding additional beds and a new shelter must not have been a really high priority for them. She feels if they have a hardship

*now it's partially through their decisions that they've made in the past two years. She said MUST does good things, but the street outreach is a huge problem.*

*Ms. Theresa Prewett. She said during the day and night, people who she doesn't know if it's people that have been turned away from MUST or not are putting tarps everywhere. She said her daughter had to sell her house and move and she doesn't want to have to do the same.*

*Mr. Roy Barnes spoke in rebuttal. He said we just heard all the things that MUST is doing so badly, feeding the hungry, clothing the naked. He said Josh Pike, who just left, is a graduate of that program and is now in the Naval Academy. He came through MUST. He said the problems that exists with homelessness is not connected to MUST. He understands homelessness is a problem, he deals with it every day in the property he owns and where he lives. They don't give away tents for folks to go out and camp in. He said none of that is true. He said they will feed anybody who is hungry. He said this project is just across the road from where they already are and that the question is do we want it standing up as a thumb that you will be able to see from 41 and Bells Ferry and everywhere else sticking up or do you want it fitted against the natural contours of the property allowing for family units so mothers and children are separated from men and vets instead of everyone together in one building. Either way it's going to be built. He said Shady Grove Baptist Church has a feeding program and no one ever says anything about that; they blame it all on MUST. Bringing these folks in is simply not true, they are everywhere. Homelessness is a problem, but it is not all MUST's fault.*

*Mr. Clark asked Mr. Barnes about security. Mr. Hausfeld replied stating they have been in touch with the Provost at KSU; they handle mass crowds in a very secure environment. They are connecting with MPD and Cobb Police and a private consultant. They don't have definitive information at this time because there is a difference between what they do out front and what they do out back. Just fencing it in sounds like an easy problem, but it is not. It's a comprehensive problem. He is pledging that those four components will analyze all aspects of security and tell them how the building should be oriented, signage and best security measures to separate the community that comes in and those who are borderline homeless from those that are homeless.*

*Mr. Hunter said he still did not understand what the hardship of building three stories would be. Response from audience member inaudible. He expressed concern over how we disrespect a family that is there within the 750 feet.*

*The public hearing was closed.*

*A motion was made by Mr. Hunter to deny this application. It was seconded by Mr. Lowman. The Motion carried 5-2-0. Chairman Van Buren and Mr. Clark opposed.*

**A motion was made by Board member Hunter, seconded by Board member Lowman, that this matter be Denied. The motion carried by the following vote:**

**Absent: 0**

**Vote For: 5**

**Vote Against: 2**

## **ADJOURNMENT:**

*The September 30, 2019 meeting of the Board of Zoning Appeals was adjourned at 7:51PM*

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***BOBBY VAN BUREN, CHAIRMAN***

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***INES EMBLER, SECRETARY***